

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE

JOHN BRUNHAMMER,	:
	:
Plaintiff,	:
	:
v.	: Civil Action No. 03-423-JJF
	:
JO ANNE B. BARNHART,	:
Commissioner of Social	:
Security,	:
	:
Defendant.	:

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Gary Linarducci, Esquire of GARY LINARDUCCI, ESQUIRE, New Castle, Delaware.  
Attorney for Plaintiff.

Colm F. Connolly, Esquire, United States Attorney, and Paulette K. Nash, Esquire, Assistant United States Attorney, of the OFFICE OF THE UNITED STATES ATTORNEY, Wilmington, Delaware.  
Of Counsel: James A. Winn, Esquire, Regional Chief Counsel, and William B. Reeser, Esquire, Assistant Regional Counsel of the OFFICE OF THE GENERAL COUNSEL, SOCIAL SECURITY ADMINISTRATION, Philadelphia, Pennsylvania.  
Attorneys for Defendant.

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**OPINION**

April 28, 2004

Wilmington, Delaware

**Farnan, District Judge.**

Presently before the Court is an appeal pursuant to 42 U.S.C. § 405(g), filed by Plaintiff, John Brunhammer, seeking review of the final administrative decision of the Commissioner of the Social Security Administration denying Plaintiff's application for disability insurance benefits ("DIB") under Title II of the Social Security Act, 42 U.S.C. §§ 401-433. Plaintiff has filed a Motion For Summary Judgment (D.I. 9) requesting the Court to enter judgment in his favor. In response to Plaintiff's Motion, Defendant has filed a Cross-Motion For Summary Judgment (D.I. 11) requesting the Court to affirm the Commissioner's decision. For the reasons set forth below, Defendant's Motion For Summary Judgment will be granted, and Plaintiff's Motion For Summary Judgment will be denied. The decision of the Commissioner dated July 15, 2002 will be affirmed.

**BACKGROUND**

**I. Procedural Background**

Plaintiff filed an application for DIB on May 21, 2001, alleging that he was disabled since February 11, 2001, because of a deformed proximal interphalangeal (PIP) joint of the middle finger on his right hand causing loss of grip strength, weakness and difficulty grasping and holding heavy objects. (Tr. 44, 59, 87, 94). Plaintiff's application for DIB was denied initially and upon reconsideration. (Tr. 23-26, 29-32). Thereafter,

Plaintiff requested a hearing before an administrative law judge (the "A.L.J."). (Tr. 33-34). On July 15, 2002, the A.L.J. issued a decision denying Plaintiff's application for DIB finding that Plaintiff was not disabled as defined by the Act. (Tr. 11-19). Following the unfavorable decision, Plaintiff filed a timely Request For Review Of Hearing Decision. (Tr. 6-7). On April 11, 2003, the Appeals Council denied Plaintiff's request for review (Tr. 3-4), and the A.L.J.'s decision became the final decision of the Commissioner. Sims v. Apfel, 530 U.S. 103, 107 (2000).

After completing the process of administrative review, Plaintiff filed the instant civil action pursuant to 42 U.S.C. § 405(g), seeking review of the A.L.J.'s decision denying his claim for DIB. In response to the Complaint, Defendant filed an Answer (D.I. 3) and the Transcript (D.I. 5) of the proceedings at the administrative level.

Thereafter, Plaintiff filed a Motion For Summary Judgment and Opening Brief in support of the Motion. In response, Defendant filed a Cross-Motion For Summary Judgment and a combined Opening and Answering Brief requesting the Court to affirm the A.L.J.'s decision. Plaintiff waived the right to file a Reply Brief (D.I. 13). Accordingly, this matter is fully briefed and ripe for the Court's review.

## **II. Factual Background**

### **A. Plaintiff's Medical History, Condition and Treatment**

At the time of the A.L.J.'s decision, Plaintiff was fifty-four years old. Plaintiff completed four years of high school and a carpenter's union apprenticeship training program. (Tr. 65).

Plaintiff served in the military from 1967 to 1969, and then worked as a union carpenter from 1971 to February 11, 2001, when he was laid off from work. During his thirty years as a carpenter, Plaintiff worked for several employers and was also self-employed for a period of time.

Plaintiff alleges a disability onset date of February 11, 2001, but he also alleges that his right hand impairment first began to bother him on October 1, 1969. (Tr. 59). Plaintiff initially injured his right middle finger while he was playing football in the army after he came back from Vietnam. Plaintiff fractured and dislocated his right middle finger and fractured his left pinky. Plaintiff had surgery in 1969 to restore his joint motion, but Plaintiff contends that the surgery was not successful. (Tr. 62, 111, 113, 133). However, Plaintiff presents no evidence concerning this treatment, and the record demonstrates that Plaintiff continued with his employment as a carpenter for more than 30 years after his surgery.

Plaintiff was evaluated by physicians at the Department of

Veterans Affairs and received Veterans Administration ("VA") disability benefits since his injury. Plaintiff's medical reports suggest that he was not interested in receiving treatment, but was primarily interested in obtaining disability benefits or getting an increase in his VA disability rating. (Tr. 107, 110-111, 172-173). Effective February 16, 1996, Plaintiff's VA disability benefits were increased from 10 to 20 percent. (Tr. 93, 116, 118).

On March 29, 1996, Plaintiff saw Peter Townsend, M.D., an orthopedic specialist, for complaints of pain in his right palm and increasing weakness and loss of grip in his right hand. (Tr. 113). X-rays of Plaintiff's hand revealed a deformed and chronically dislocated PIP joint with a remnant of a joint space left. (Tr. 113, 162). Plaintiff was also diagnosed with a new condition, flexor tendinitis and compensatory intrinsic tendinitis of his right middle finger. Dr. Townsend recommended a femoral fusion to set Plaintiff's finger in a more useful position and decrease his tendinitis, but Plaintiff wanted to consider his options and return as needed. (Tr. 113).

On May 31, 1996, Plaintiff returned to Dr. Townsend complaining of a progressive loss of grip strength, hand weakness and pain in the palm of his right hand. (Tr. 61, 111). Dr. Townsend also noted that Plaintiff asked many questions pertaining to disability and the VA system, but Dr. Townsend

could not answer those questions. X-rays of Plaintiff's hand taken at this time showed osteoarthritic changes and a chronically dislocated PIP joint of his left little finger due to an older injury.

In November 1996, Plaintiff's wife called Alan Warrington, D.O. Plaintiff's wife asked Dr. Warren to write a letter to the VA stating that Plaintiff had atrophy in his right middle finger so that Plaintiff could get an increase in his VA disability rating. (Tr. 111). Dr. Warrington had not seen Plaintiff since June 1996 and suggested that Plaintiff call the specialist who was treating his finger. (Tr. 110). On May 13, 1999, Plaintiff's VA disability rating was increased from 20 to 30 percent, and this increase was made retroactive from November 4, 1996. (Tr. 116, 168).

There is no medical evidence in the record for the next three and a half years, from 1997 to the first half of 2000, indicating that Plaintiff sought treatment for his hands. On August 1, 2000, Plaintiff went to Dr. Warrington with complaints of pain in his right thumb that he said were present for several months. (Tr. 108). Plaintiff had not seen Dr. Warrington since he had treatment for a rash around his face and neck in 1997 and 1998. Plaintiff indicated to Dr. Warrington that he did not take any medication for his complaints of pain and stated that he was still working.

On July 9, 2001, Peter Bandera, M.D., examined Plaintiff to determine his ability to perform his job as a carpenter for the purposes of qualifying Plaintiff for a disability pension through his carpenters' union. (Tr. 130-132). Dr. Bandera's examination revealed a grossly deformed PIP joint of his right middle finger with ankylosis in extension; severe crepitus/pain with range of motion and palpation; 0 to 60 degrees of flexion of the distal interphalangeal (DIP) joint of the little finger of his left hand; tenderness over the proximal tendons of his right wrist with increased pain on stressing; pain on stressing his flexor tendons of his forearm; and an inability to form grip activities because of pain in his right thumb at the base of his wrist. Dr. Bandera diagnosed advanced ankylosis/dislocation of Plaintiff's right middle finger, chronic flexor tendinitis of his right forearm with intrinsic tendinitis of his right middle finger, and post-traumatic boutonniere deformity. On his left hand, an examination of Plaintiff revealed ankylosis with tenderness of the PIP joint in his left pinky finger. (Tr. 131). Dr. Bandera opined that Plaintiff could not perform rapid alternating movements or internal/external rotation without focal pain at the hand and that he could not perform grip activities with circular objects. (Tr. 131). As a result, Dr. Bandera opined that Plaintiff could not perform the tasks required of a carpenter, and therefore, he was disabled. Consistent with Dr. Bandera's

opinions, Plaintiff was awarded a disability pension through his union. (Tr. 92-93, 130).

On July 18, 2001, Plaintiff underwent a consultative examination by Young Kim, M.D., at the request of the state agency. (Tr. 133-138). Plaintiff informed Dr. Kim that he had difficulty lifting, grasping and handling sheets of dry wall because of his intermittent, severe finger pain. Plaintiff indicated that he took aspirin and Tylenol as needed for his pain. (Tr. 133). Plaintiff also stated that he was limited in his ability to walk, stand or sit, and was able to lift 20 to 25 pounds. (Tr. 133).

An examination of Plaintiff revealed that his memory was intact and that he was alert and oriented. Plaintiff's gait was within normal limits and he was able to stand and walk on his heels and toes without difficulty. Plaintiff's sensation was intact in all his extremities and his deep tendon reflexes were normal. (Tr. 134). Plaintiff's range of motion was limited in his right middle finger and left little finger, but normal in all other respects. Plaintiff also had mild joint swelling without temperature elevation in those two fingers. (Tr. 134). Plaintiff's grip in his right hand was decreased at 22kg, but was normal in his left hand at 48kg. Plaintiff had no muscle atrophy, and his fine finger movements were within normal limits in both hands. (Tr. 134, 138). Dr. Kim diagnosed Plaintiff with



dislocation and ankylosis of the right middle finger PIP joint and severe deformity of the PIP joint in his left little finger due to an old injury. (Tr. 133-134).

On October 2, 2001, Plaintiff returned to Dr. Townsend complaining of continued pain in the joint of his right middle finger. Dr. Townsend noted that Plaintiff continued to work as a carpenter. X-rays taken of Plaintiff's fingers showed post-traumatic degenerative changes, and an examination of Plaintiff revealed a nearly ankylosed PIP joint of his right middle finger in full extension with a 70 degree extensor lag of the DIP joint and a near ankylosis of his left small finger at 45 degrees. (Tr. 107). Dr. Townsend discussed treatment options with Plaintiff, but noted that "it became obvious [Plaintiff] was not interested at all in seeking treatment, simply had issues regarding his disability and impairment rating which will be considered at a later date." (Tr. 107).

On January 8, 2002, Plaintiff reported to the VA Medical Center for treatment for fungal nails of his feet. (Tr. 158-160). On intake, Plaintiff described his history regarding his fingers and indicated that he took Advil for pain. An examination of Plaintiff revealed that his right middle finger PIP joint and his left little finger PIP and DIB joints flexed and contracted and he exhibited no weakness or pain. (Tr. 160). Plaintiff was advised to continue to take Advil for the arthritis

in his fingers and the doctors noted that this condition was stable. (Tr. 161). In May 2002, Plaintiff was prescribed Celebrex for his pain. (Tr. 103).

In documents completed in connection with his DIB application, Plaintiff indicated that he stopped working on February 11, 2001. Plaintiff cited his inability to grasp or hold heavy objects as his only impediment. (Tr. 87, 94). Plaintiff did not claim that he had difficulty performing household tasks or other functions with his hands. Plaintiff indicated that he could vacuum, do dishes without help on a daily basis, ride a bicycle, prepare meals without assistance, and do laundry and other household chores. (Tr. 65-86, 89, 170, 174). Plaintiff also indicated that he drove once or twice a day, could mow his own lawn and grocery shop twice a week. Plaintiff did not need any help with his personal grooming, would walk two or three miles for exercise and watch television five hours a day. (Tr. 85-88, 176).

B. The A.L.J.'s Decision

On June 26, 2002, the A.L.J. conducted a hearing on Plaintiff's application for benefits. At the hearing, Plaintiff was represented by counsel. Plaintiff reiterated much of the information contained in his application. With respect to his manipulative ability, Plaintiff testified that he could pick up coins off a flat surface with his right hand, turn the pages of a

book, and grasp a can of soda with his right hand. (Tr. 170-171). Plaintiff also stated that he could write, but that he could only do so slowly. Plaintiff also testified that he could pour a gallon of milk on a repetitive basis, but that he would develop hand pain performing this task. (Tr. 176). Plaintiff also testified that he refuses to have the surgery recommended by Dr. Townsend for his finger pain. (Tr. 171).

In addition to the testimony related to his finger pain, Plaintiff also testified at the hearing regarding a learning disability. Plaintiff testified that his reading and writing ability was poor and that he would probably have a hard time performing jobs like a security monitor or gate guard because of his difficulty reading. Plaintiff's attorney contended that Plaintiff could only read at the third grade level, but no evidence was submitted to substantiate this contention. Plaintiff also did not submit any evidence related to intelligence testing or academic achievement tests.

The A.L.J. also heard the testimony of a vocational expert, William T. Sloven, III. The A.L.J. asked the vocational expert to consider a hypothetical individual with Plaintiff's age, education and work history. The A.L.J. also asked the A.L.J. to consider a light residual functional capacity with no impairment sitting, standing, and walking and a 10 pound limit on lifting and carrying. The A.L.J. further requested the vocational expert

to consider that the individual had moderate difficulty reaching, handling and fingering of the right dominant upper extremity, with no repetitive gripping and grasping. (Tr. 181). The vocational expert testified that such an individual could perform unskilled clerical/administrative jobs like travel clerk with 200 jobs locally and 175,000 nationally, office helper with 1,000 jobs locally and 700,000 nationally, and information clerk with 200 jobs locally and 300,000 nationally. (Tr. 181-182).

The A.L.J. then listed further limitations, and the vocational expert testified that physically, Plaintiff could still perform the cited jobs. However, the vocational expert also stated that if Plaintiff's testimony was fully credible the use of his hand would be too slow to allow the successful performance of these jobs. (Tr. 183-185).

In his decision dated July 15, 2002, the A.L.J. concluded that Plaintiff had not engaged in substantial gainful activity since the onset of his disability on February 11, 2001. The A.L.J. found that Plaintiff had severe impairments including osteoarthritis with dislocation and ankylosis of the middle finger PIP joint of the right hand, deformity of the PIP joint of the left hand little finger due to an old injury, and hypertension, but that he did not have an impairment meeting or equaling a listed impairment. The A.L.J. also concluded that Plaintiff's testimony regarding his limitations was not totally

credible, because it was inconsistent with other statements he made concerning the extent of his activities and with the medical evidence, including Plaintiff's use of only over the counter pain medications and his refusal to undergo treatment for his fingers.

The A.L.J. found that while Plaintiff was unable to perform his past relevant work, he retained the residual functional capacity to perform a significant range of light work. The A.L.J. specifically found that Plaintiff was able to perform the unskilled light jobs of travel clerk, officer helper and information clerk, and that significant numbers of these jobs existed in the national and regional economies. Accordingly, the A.L.J. concluded that Plaintiff was not under a disability within the meaning of the Act, and therefore, not entitled to benefits.

#### **STANDARD OF REVIEW**

Pursuant to 42 U.S.C. § 405(g), findings of fact made by the Commissioner of Social Security are conclusive, if they are supported by substantial evidence. Accordingly, judicial review of the Commissioner's decision is limited to determining whether "substantial evidence" supports the decision. Monsour Medical Ctr. v. Heckler, 806 F.2d 1185, 1190 (3d Cir. 1986). In making this determination, a reviewing court may not undertake a de novo review of the Commissioner's decision and may not re-weigh the evidence of record. Id. In other words, even if the reviewing court would have decided the case differently, the Commissioner's

decision must be affirmed if it is supported by substantial evidence. Id. at 1190-91.

The term "substantial evidence" is defined as less than a preponderance of the evidence, but more than a mere scintilla of evidence. As the United States Supreme Court has noted substantial evidence "does not mean a large or significant amount of evidence, but rather such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." Pierce v. Underwood, 487 U.S. 552, 555 (1988).

With regard to the Supreme Court's definition of "substantial evidence," the Court of Appeals for the Third Circuit has further instructed, "A single piece of evidence will not satisfy the substantiality test if the [Commissioner] ignores or fails to resolve a conflict created by countervailing evidence. Nor is evidence substantial if it is overwhelmed by other evidence . . . or if it really constitutes not evidence but mere conclusion." Kent v. Schweiker, 710 F.2d 110, 114 (3d Cir. 1983). Thus, the substantial evidence standard embraces a qualitative review of the evidence, and not merely a quantitative approach. Id.; Smith v. Califano, 637 F.2d 968, 970 (3d Cir. 1981).

## **DISCUSSION**

### **I. Evaluation Of Disability Claims**

Within the meaning of social security law, a "disability" is

defined as the inability to do any substantial gainful activity by reason of any medically determinable physical or mental impairment, which can be expected to result in death, or which has lasted or can be expected to last, for a continuous period of not less than 12 months. 42 U.S.C. § 423(d)(1)(A). To be found disabled, an individual must have a "severe impairment" which precludes the individual from performing previous work or any other "substantial gainful activity which exists in the national economy." 20 C.F.R. § 404.1505. In order to qualify for disability insurance benefits, the claimant must establish that he or she was disabled prior to the date he or she was last insured. 20 C.F.R. § 404.131, Matullo v. Bowen, 926 F.2d 240, 244 (3d Cir. 1990). The claimant bears the initial burden of proving disability. 42 U.S.C. § 423(d)(5).

In determining whether a person is disabled, the Regulations require the A.L.J. to perform a sequential five-step analysis. 20 C.F.R. § 404.1520. In step one, the A.L.J. must determine whether the claimant is currently engaged in substantial gainful activity. In step two, the A.L.J. must determine whether the claimant is suffering from a severe impairment. If the claimant fails to show that his or her impairment is severe, he or she is ineligible for benefits. Plummer v. Apfel, 186 F.3d 422, 427 (3d Cir. 1999).

If the claimant's impairment is severe, the A.L.J. proceeds

to step three. In step three, the A.L.J. must compare the medical evidence of the claimant's impairment with a list of impairments presumed severe enough to preclude any substantial gainful work. Id. at 428. If the claimant's impairment meets or equals a listed impairment, the claimant is considered disabled. If the claimant's impairment does not meet or equal a listed impairment, the A.L.J.'s analysis proceeds to steps four and five. Id.

In step four, the A.L.J. is required to consider whether the claimant retains the residual functional capacity to perform his or her past relevant work. Id. The claimant bears the burden of establishing that he or she cannot return to his or her past relevant work. Id.

In step five, the A.L.J. must consider whether the claimant is capable of performing any other available work in the national economy. At this stage the burden of production shifts to the Commissioner, who must show that the claimant is capable of performing other work if the claimant's disability claim is to be denied. Id. Specifically, the A.L.J. must find that there are other jobs existing in significant numbers in the national economy, which the claimant can perform consistent with the claimant's medical impairments, age, education, past work experience and residual functional capacity. Id. In making this determination, the A.L.J. must analyze the cumulative effect of



all of the claimant's impairments. At this step, the A.L.J. often seeks the assistance of a vocational expert. Id. at 428.

## **II. Whether The A.L.J.'s Decision Is Supported By Substantial Evidence**

By his Motion, Plaintiff contends that the A.L.J.'s decision is not supported by substantial evidence. Specifically, Plaintiff contends that the A.L.J. (1) improperly applied the Medical-Vocational Guidelines (the "Grids") in determining that Plaintiff was disabled, and (2) improperly questioned and instructed the vocational expert. The Court will consider each of Plaintiff's arguments in turn.

### **A. Whether The A.L.J. Erred In The Manner In Which He Applied The Grids To Plaintiff's Claim**

With respect to his claim that the A.L.J. improperly applied the Grids, the Plaintiff contends that the A.L.J. (1) should have applied the advanced age guidelines in determining whether Plaintiff was disabled, and (2) should have considered Plaintiff's educational ability when he made the determination that Grid Rule 202.14 applied. Specifically, Plaintiff contends that the A.L.J. erred in applying Grid Rule 202.14 to Plaintiff's case and that the A.L.J. should have applied Grid Rule 202.06 or Grid Rule 202.09 and found Plaintiff to be disabled.

It is evident from the A.L.J.'s decision, that the A.L.J. did not rely on the Grids to direct a conclusion that Plaintiff was not disabled. Rather, the A.L.J. relied upon the testimony

of the vocational expert at the fifth step of the sequential evaluation and only used the Grids as a framework for his decision. As such, the Court disagrees with Plaintiff's contention that the A.L.J. mechanically and erroneously relied upon the Grids to conclude that Plaintiff was disabled.

As for Plaintiff's contention that the A.L.J. should have applied Grid Rule 202.06 or Grid Rule 202.09 to Plaintiff's case, the Court also concludes that the record does not support the application of these Rules. Grid Rule 202.06 applies to claimants who are of advanced age, which is defined as age 55 and over. During the time period relevant to his claim for DIB, Plaintiff was between the ages of 53 and 54. Plaintiff did not turn 55 until two months after the A.L.J. issued his decision. Although it is true that the A.L.J. may not mechanically apply the Grids in a borderline situation, the decision to apply an older age category is based on a consideration of the overall impact of all the factors in the claimant's case. 20 C.F.R. § 404.1563(b). The A.L.J. did not mechanically apply the Grids in this case, but instead relied upon the testimony of a vocational expert to support his finding that Plaintiff was not disabled. Substantial evidence supports the A.L.J.'s decision in this regard. The vocational expert recognized that Plaintiff was reaching advanced age, but also considered the other factors in Plaintiff's case, including those limitations which were

supported by the record. For example, Plaintiff never submitted any objective medical evidence to support his claim that he experienced arthritis throughout his hands. Dr. Townsend never rendered this conclusion, and the x-rays of Plaintiff's hands did not support his claim. Rather, Plaintiff's impairments were limited to his right middle finger and his left middle finger, and the record establishes that despite these impairments, Plaintiff performed his job as a carpenter for 30 years. Until May 2002, Plaintiff took only over the counter medications for his pain, and Plaintiff indicated in his responses to the disability questionnaires that his pain was not so severe as to interfere with his family or cause him fatigue or depression. Plaintiff did not undergo any therapy or other treatment for his hands and he refused to have the surgery that was recommended by his doctors. Although Plaintiff testified that he had difficulty with all activities using his hands, his disability reports indicated that he only had difficulty grasping and holding heavy objects. Further, the physical examinations of Plaintiff demonstrated that he had no loss of grip strength in his left hand and retained more than half of normal grip strength in his right hand, despite the problems with his right middle finger. (Tr. 133-138). The A.L.J.'s hypothetical and the testimony of the vocational expert adequately took into consideration Plaintiff's limitations and his advanced age, and the vocational

expert still concluded that Plaintiff could perform a significant number of jobs in the national economy. Because the totality of the circumstances does not support the application of Grid Rule 202.06, the Court concludes that the A.L.J. did not err in declining to apply Grid Rule 202.06.

In addition, the Court also concludes that the A.L.J. was not required to apply Grid Rule 202.09. Grid Rule 202.09 applies to claimants who are closely approaching advanced age, but who are also illiterate or unable to communicate in English and have an unskilled work background. The evidence in the record does not support the application of Grid Rule 202.09. Although Plaintiff testified that he has a learning disability and difficulty reading, Plaintiff never claimed that he was illiterate. Moreover, Plaintiff presented no evidence to support his claim that he was learning disabled. See 42 U.S.C. § 423(d)(5) ("An individual shall not be considered to be under a disability unless he furnishes such medical and other evidence of the existence thereof as the Commissioner of Social Security may require."); Adorno v. Shalala, 40 F.3d 43, 46 (3d Cir. 1994) (recognizing that claimant bears burden to establish through relevant evidence the existence of severe medical impairments that would preclude plaintiff from working).

Further, the evidence contained in the record demonstrates that Plaintiff was not illiterate, as required for the

application of Grid Rule 202.09. The regulations define illiteracy as the inability to read or write a simple message such as instructions or inventory lists. 20 C.F.R. § 404.1564(a) (b) (1). Plaintiff was a high school graduate and did not take any special education classes. (Tr. 65). Plaintiff served in the Army for two years and worked in the skilled trade of carpentry for thirty years. (Tr. 44, 60, 65, 72-73, 121, 168). Of his thirty years as a carpenter, Plaintiff was self-employed for 15 years. Plaintiff reported that he was able to read when he applied for DIB, and Plaintiff reported that he had a driver's license and had no difficulty paying bills, dealing with bank accounts or dealing with insurance claims. (Tr. 86-87, 173). In addition, the claim representatives who interviewed Plaintiff and assisted him with the filing of his DIB application observed no problems with Plaintiff's ability to read or understand. (Tr. 70-71, 96-97). Accordingly, the record belies Plaintiff's contention that he was illiterate, and therefore, the Court concludes that the A.L.J. was not required to apply Grid Rule 202.09.

In sum, the Court concludes that the record supports the A.L.J.'s use of Rule Grid 202.14 as a framework for his decision, and that the A.L.J. did not err in declining to apply Grid Rule 202.06 and Grid Rule 202.09. The A.L.J. did not apply the Grids rigidly, but used them as a framework in conjunction with the

testimony of the vocational expert to conclude that Plaintiff was not disabled. Further, the evidence does not support Plaintiff's claim that he was learning disabled, and the A.L.J. appropriately discounted Plaintiff's unsupported claims of a learning disability. Accordingly, the Court concludes that the A.L.J. did not err in his application of the Grids as a framework for his decision and did not err in his treatment of Plaintiff's educational ability.

B. Whether The A.L.J. Erred In Questioning And Instructing The Vocational Expert

Plaintiff next contends that the A.L.J. improperly questioned and instructed the vocational expert. Specifically, Plaintiff contends that the A.L.J.'s hypothetical failed to take into account all of Plaintiff's limitations, including his limited ability to read and write. In addition, Plaintiff contends that the A.L.J. mischaracterized Plaintiff's physical limitations regarding his ability to use his hands.

Reviewing the record as it relates to these issues, the Court concludes that the A.L.J. did not err in his questioning of the vocational expert. The A.L.J.'s hypothetical question need only contain those limitations supported by the objective medical evidence in the record. Plummer v. Apfel, 186 F.3d 422 (3d Cir. 1999); Chrupcala v. Heckler, 829 F.2d 1269, 1276 (3d Cir. 1987). As discussed in the context of the A.L.J.'s application of the Grids, the evidence presented by Plaintiff did not support his

claim that he was unable to read or write. Further, the evidence supported the physical limitations raised by the A.L.J. in his hypothetical question. In his hypothetical, the A.L.J. considered an individual with no impairments sitting, standing, or walking, but the A.L.J. placed a ten pound limit on the individual's ability to lift/carry. The A.L.J. further restricted the individual to only moderate difficulty reaching, handling and fingering and no repetitive gripping or grasping. Despite these restrictions, the vocational expert was still able to identify several jobs in the unskilled, clerical/administrative area, which Plaintiff could perform.

To the extent that Plaintiff contends that the A.L.J. was required to credit Plaintiff's testimony that he was learning disabled or had the inability to use his hands at any task, the Court points out that the A.L.J.'s credibility determinations are entitled to great deference, where as here, the A.L.J. has adequately explained his reasons for his determination. Wilson v. Apfel, 1999 WL 993723, \*3 (E.D. Pa. Oct. 29, 1999); Schonewolf v. Callahan, 972 F. Supp. 277, 286 (D.N.J. 1997) (citations omitted). As the A.L.J. recognized, the objective medical evidence in the record and statements made by Plaintiff in the context of his disability application contradict Plaintiff's claims of a learning disability and his inability to use his hands at any task, and therefore, the A.L.J. was not required to

accept Plaintiff's testimony on these issues.

In sum, the Court concludes that the A.L.J. appropriately questioned and instructed the vocational expert to consider only those limitations which were supported by the record. Further, the A.L.J.'s decision was supported by the objective medical evidence in this case, and therefore, even if the Court would have decided the case differently, the Court must affirm the A.L.J.'s decision. Monsour, 806 F.2d at 1190-1191. Accordingly, the Court will grant Defendant's Motion For Summary Judgment, deny Plaintiff's Motion For Summary Judgment, and affirm the decision of the Commissioner dated June 15, 2002.

#### **CONCLUSION**

For the reasons discussed, the Court will grant Defendant's Motion For Summary Judgment and deny Plaintiff's Motion For Summary Judgment. The decision of the Commissioner dated June 15, 2002 will be affirmed.

An appropriate Order will be entered.



IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE

JOHN BRUNHAMMER,	:	
	:	
Plaintiff,	:	
	:	
v.	:	Civil Action No. 03-423-JJF
	:	
JO ANNE B. BARNHART,	:	
Commissioner of Social	:	
Security,	:	
	:	
Defendant.	:	

**O R D E R**

At Wilmington, this 28th day of April 2004, for the reasons discussed in the Opinion issued this date;

IT IS HEREBY ORDERED that:

1. Defendant's Cross-Motion For Summary Judgment (D.I. 11) is GRANTED.
2. Plaintiff's Motion For Summary Judgment (D.I. 9) is DENIED.
3. The final decision of the Commissioner dated June 15, 2002 is AFFIRMED.
4. The Clerk is directed to enter judgment against Plaintiff and in favor of Defendant.

JOSEPH J. FARNAN, JR.  
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE

JOHN BRUNHAMMER,	:	
	:	
Plaintiff,	:	
	:	
v.	:	Civil Action No. 03-423-JJF
	:	
JO ANNE B. BARNHART,	:	
Commissioner of Social	:	
Security,	:	
	:	
Defendant.	:	

**JUDGMENT IN A CIVIL CASE**

For the reasons set forth in the Court's Opinion and Order dated April 28, 2004;

IT IS ORDERED AND ADJUDGED that judgment be and is hereby entered in favor of Defendant Jo Anne Barnhart and against Plaintiff John Brunhammer.

JOSEPH J. FARNAN, JR.  
UNITED STATES DISTRICT JUDGE

Dated: April 28, 2004

Anita Bolton  
(By) Deputy Clerk